

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

PENNSYLVANIA HIGHER EDUCATION  
ASSISTANCE AGENCY ("PHEAA"),

Plaintiff,

v.

ANTOINE D. JOHNSON, MD, individually,  
and the marital community composed of  
ANTOINE D. JOHNSON and JANE DOE  
JOHNSON

Defendants.

Case No. C10-5641 RBL

ORDER TO SHOW CAUSE

This matter comes before the Court on Defendant's Application to Proceed in Forma Pauperis (IFP) and Notice of Removal. The Court GRANTS Defendant's IFP. Defendant is ORDERED TO SHOW CAUSE by OCTOBER 14, 2010 why the Court should not remand this case to Grays Harbor County Superior Court for failure to remove in a timely manner.

Under 28 U.S.C. § 1446(b), a notice of removal must be filed within thirty days after receipt of service or within thirty days after the service of summons. This time limit is mandatory. *Fristoe v. Reynolds Metals Co.*, 615 F.2d 1209, 1212 (9th Cir. 1980). Although Defendant's Notice of Removal does not include proof of service, it does include a signed, notarized letter from Defendant to Plaintiff's attorneys stating that he had been served. Def.'s Notice of Removal at 28. The letter is dated May 6, 2010 and states that summons had been served upon Defendant on or about April 23, 2010. *Id.* Defendant's letter is some evidence that he was,

1 in fact, served with Plaintiff's summons on the date stated, but it is not complete proof. If Defendant was  
2 served on or about April 23, then the time for removal in this action expired on or about May 23, 2010.  
3 Defendant filed his Notice of Removal on September 7, 2010.

4 Therefore, it is hereby **ORDERED** that the Defendant shall provide this Court with proof of when he  
5 was served to show why this Court should not remand this case for failure to timely remove. Defendant must  
6 show cause no later than October 14, 2010.

7 Dated this 23<sup>rd</sup> day of September, 2010.

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10 RONALD B. LEIGHTON  
11 UNITED STATES DISTRICT JUDGE  
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